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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220392
Party	Defendant NexID Biometrics LLC
Correspondence Address	Cynthia J. Lee Thomas Horstemeyer LLP Suite 1500 400 Interstate North Parkway SE Atlanta, GA 30339 cynthia.lee@thomashorstemeyer.com
Submission	Answer
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Date	04/08/2015
Attachments	02181133.PDF(16977 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NEXTGENID, INC.,)	
)	
Opposer,)	Opposition No.: 91220392
)	Application No.: 86/234,336
v.)	Mark: NEXID BIOMETRICS & Design
)	
NEXID BIOMETRICS LLC,)	
Applicant.)	

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
OPPOSER’S NOTICE OF OPPOSITION**

COMES NOW, NEXID BIOMETRICS LLC (hereinafter, “Applicant”), by and through its undersigned counsel, and in answer to Opposer NEXTGENID, INC.’s (hereinafter, “Opposer”) Notice of Opposition (hereinafter, “the Notice”) filed in this matter, asserts as follows:

GROUND FOR OPPOSITION

The Grounds for Opposition are denied.

THE NOTICE OF OPPOSITION PREAMBLE PARAGRAPH

Applicant admits that it filed Application Serial No. 86/234,336, that such application was published for opposition in the *Trademark Official Gazette* on September 30, 2014, and that it is a New York limited liability company with an address at 65 Main St., Box 2, Suite 2203, Potsdam, New York 13676. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the Notice of Opposition preamble paragraph, and therefore denies the same.

1.

Applicant admits that U.S. Registration No. 2,892,487 is for the mark NEXTGENID for the following goods in Class 9: "Security and access and exit control devices for internal facilities and buildings, namely, electronically operated reader pads for biometric recognition, and motion sensitive security arrays; computer software for use in monitoring and operating security systems and access and exit control devices in internal facilities and buildings; computer software, hardware, and peripherals for biometric recognition and analysis." Applicant is without knowledge or information sufficient to form a belief regarding ownership of U.S. Registration No. 2,892,487 and therefore denies the same. Applicant denies any remaining allegations that are not specifically admitted.

2.

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice and, therefore, denies the same.

3.

This paragraph does not require an answer from Applicant. To the extent an answer is required, all allegations are denied.

4.

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice and, therefore, denies the same.

5.

Applicant admits that on March 27, 2014, it filed U.S. Application Serial No. 86/234,336 for the mark NEXID BIOMETRICS & Design, for use in connection with the following goods in International Class 009: "Computer software for processing digital images." Applicant denies that it claimed use since October 30, 2012. Rather, Applicant claimed first use in commerce as of "[a]t least as early as 10/30/2012."

6.

Applicant admits that it has a website at <http://nexidbiometrics.com> and that the quoted text currently appears on the website. Applicant denies that such information is relevant to the instant opposition proceeding.

7.

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Notice and, therefore, denies the same.

8.

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Notice and, therefore, denies the same.

9.

Denied.

10.

Applicant denies that Opposer has been or will continue to be damaged by the attempted registration of Applicant's Mark in the Application. Applicant further denies that Opposer is entitled to any of the relief for which it prays in the Notice.

11.

Applicant hereby denies each and every allegation contained in Opposer's Notice of Opposition except as specifically admitted herein.

AFFIRMATIVE DEFENSES

Applicant hereby states the following affirmative defenses to the cause of action alleged in the Notice of Opposition.

1. The Notice of Opposition, in whole or in part, fails to state a claim upon which relief can be granted.

2. Applicant's registration and use of the Mark in the Application is not likely to cause confusion, mistake, or deceive as to the source or sponsorship of Applicant's goods for those of Opposer.

3. The Mark shown in the Application is not confusingly similar to Opposer's mark.

4. Applicant's Mark does not suggest any connection with the Opposer.

5. Applicant affirmatively alleges that the Applicant has been using its Mark and developing consumer recognition and goodwill in its mark since adoption, and Opposer has not heretofore objected to such use of Applicant's

Mark. Opposer is consequently barred from opposing the Application under the doctrines of laches, acquiescence and/or estoppel.

6. Applicant affirmatively alleges that there are numerous other parties who are currently using marks, a number of which are federally registered, that include similar elements in connection with various goods and services in International Class 009. As such, if Opposer has any rights in its mark, such rights are extremely weak and too narrow to stop the registration of Applicant's Mark.

ADDITIONAL DEFENSES

As Applicant's investigation is ongoing and discovery has not yet been taken, and as many facts are likely in the possession of Opposer and third parties, Applicant reserves the right to amend its Answer, including its defenses.

WHEREFORE, Applicant prays:

- a) that the Opposition be dismissed with prejudice;
- b) that the Opposer's prayer for relief be denied;
- c) that Applicant's Mark in the Application be allowed to proceed to registration; and
- d) that the Trademark Trial and Appeal Board award such other and further relief to Applicant as it deems just and proper under the circumstances.

Applicant believes no fees are due; however, the Commissioner is authorized to charge any underpayment to Deposit Account No. 20-0778.

Respectfully submitted this 8th day of April, 2015

/s/ Dan R. Gresham

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER'S NOTICE OF OPPOSITION was sent via email, per consent of Counsel for the Opposer, to Counsel for the Opposer as follows:

David May
DMay@nixonpeabody.com
Jeffrey Molinoff
JMolinoff@nixonpeabody.com

This 8th day of April, 2015.

/s/ Dan R. Gresham
Dan R. Gresham